

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0170, 04-0210, 04-0235
CORPORATE INCOME TAX
For Year 2000

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ISSUES

I. Gross Income Tax – Interstate commerce.

Authority: Ind. Code § 6-2.1-3-3; 45 IAC 1.1-3-3

Taxpayer protests the imposition of income tax on advertising fees collected from an Indiana limited partnership under the control of taxpayer.

STATEMENT OF FACTS

Taxpayer is a group of several companies, three involved in this protest, engaged in the manufacturing and sale of equipment. During the years in question, Taxpayer shipped its equipment to Indiana customers via common carrier. During the years in question, Taxpayer had an Indiana situs, with both property and payroll in Indiana.

Taxpayer reported that its income from its Indiana sales and service receipts was not subject to gross income tax. However, the Department found that Taxpayer had an Indiana business situs, and that its sales were directed from the Indiana business situs. Accordingly, Taxpayer was assessed additional tax and penalty, which Taxpayer has protested.

I. Gross Income Tax – Interstate Commerce

DISCUSSION

Taxpayer has asserted that, in general, its sales generally worked in a manner such as this: a customer would call Taxpayer, requesting to purchase its items. Taxpayer would then ship the items from its out-of-state location to its customer in Indiana or other states. Taxpayer maintains that the sales were made in interstate commerce, and therefore are exempt under Ind. Code § 6-2.1-3-3.

Under 45 IAC 1.1-3-3(d)(7),

[g]ross income derived from the sale of tangible personal property in interstate commerce is subject to the gross income tax if the sale is completed in Indiana. The following examples are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce:

...

(7) A sale to an Indiana buyer by a nonresident seller if the sale:.

(A) originated from;

(B) was channeled through; or

(C) was otherwise connected with;

an Indiana business situs established by the seller.

Thus, under the regulations, a two-part test must be met for taxation. First, a taxpayer must have a business situs in Indiana. Second, the sale in question must originate from, be channeled through or otherwise connected with that situs. That Taxpayer has a business situs in Indiana is not disputed. Taxpayer operates several divisions, some with an Indiana situs and others that Taxpayer maintains do not have Indiana situs. However, whenever a division of an entity is determined to have situs, the entire entity has situs, not just the individual division.

Taxpayer has, for all its subsidiaries, conceded that service receipts are taxable. That said, Taxpayer has provided sufficient documentation to conclude that the transaction through its divisions that it claimed did not have an Indiana situs (assuming such a thing can exist separately for divisions within an entity) did not meet the regulatory test, because Taxpayer established that the transactions did not originate from, were not channeled through, and were not otherwise connected with Taxpayer's Indiana business situs. However, to the extent that the sales were through divisions that had an Indiana situs, Taxpayer has not met its statutory burden of proof.

Further, one subsidiary also was a partner in a partnership that transacted business in Indiana. While Taxpayer has conceded that the sales equal to the partnership's Indiana sales times the partnership's apportionment percentage is taxable, Taxpayer has not provided sufficient information that its sales to Indiana are exempt, and accordingly Taxpayer is denied with respect to those receipts.

FINDING

The taxpayer is sustained in part and denied in part.